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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 768

EDMUND D. OSBOURNE, ET AL., Appellants

v.

MISSISSIPPI VALLEY BARGE LINE COMPANY, ET AL., Appellees

On Appeal From the United States District Court for the Eastern District of Missouri, Eastern Division.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Appellants Edmund D. Osbourne and Pittsburgh Towing Company present their petition for a rehearing of the above entitled cause, and, in support thereof, respectfully show:

GROUNDS FOR REHEARING

The Motion to Affirm filed by the United States and and the Interstate Commerce Commission recognized that the injunction entered was too broad and offered to join in a motion to modify it. The decision of this Court, entered January 15, 1968, affirmed the judgment, without prejudice to the presentation in the Lower Court of an appropriate motion to modify the injunction. The decision thus apparently recognizes what the United States and the Commission have admitted. However, the affirmation of the judgment — with only a proviso

that Appellants might seek relief in the Lower Court — clearly means that until relief is given (if in fact any relief is ever given) Appellants' rights will remain curtailed. We submit that the curtailed rights are so important and basic as to make immediate relief from this Court necessary.

The judgment affirmed made illegal Osbourne's employment by the Zubic Estate, it precluded his ever being employed by the owner of Water Certificate W-364, and it destroyed his existing contract right to buy that Certificate from the Zubic Estate. Osbourne has been forced to quit his employment, the Zubic Estate has advised that its contract with Osbourne to sell him the Certificate is a nullity, and the Commission, acting upon the request of the Zubic Estate, has dismissed the application for transfer of Certificate W-364 to Osbourne. Such a result, predicated on a decision holding invalid an attempted transfer of Certificate W-364 in 1960, is, we submit, incredible under any legal system, particularly ours. Because Osbourne once attempted, through a corporate vehicle, to acquire the Certificate — but did so improperly — he is now being punished through the denial of present and future employment and contract rights.

This Court's decision fails to handle that issue. If it was right and proper to take away Osbourne's employment, to restrict his future employment, and to destroy his contractual rights, then we submit the proviso in the decision can only lead to further useless litigation. If, on the other hand, it was not right and proper to do so, then this Court should so hold in order that this litigation can be expeditiously terminated. Under this

Court's decision of January 15, 1968, further litigation is inevitable and, pending the result of such litigation, Osbourne will continue to be deprived of his employment and contract rights. The passage of time might well make ultimate legal success a Pyrrhic victory, for intervening events might strip all practical benefit from any modification of the injunction.

Further litigation on any attempted modification of the injunction is inevitable. Following entry of this Court's decision, Appellants' counsel inquired of counsel for all other parties concerning their position with respect to modification of the injunction. Counsel for the Interstate Commerce Commission has advised that it would agree to a modification which would permit Osbourne to seek the transfer of the Certificate to him, but would oppose any modification that would permit Osbourne's employment in any capacity by the owner of the Certificate. Counsel for the Zubic Estate has advised that, because of certain pending matters before the Commission, the estate cannot consent to any modification of the injunction. Counsel for Mississippi Valley Barge Line Company, American Commercial Lines, Inc. and Union Barge Line Corporation has advised that his clients will oppose any modification of the injunction. Thus, only one party will agree to a modification of the injunction limited to protecting Osbourne's contract rights, but not his employment rights. The other parties will not even go that far. As the record discloses, this matter has already been in litigation for seven years. So far, the only discernible benefit has been to the competing barge lines who have effectively eliminated Osbourne as a competitor and who have also succeeded in having all operations under Certificate

W-364 halted because of the decision of the Lower Court. Since that decision, and based upon it, the Commission has striken the Zubic tariff and halted all operations under Certificate W-364.

If prompt and effective justice is to be done, we submit that this Court should not affirm the Lower Court judgment, but should direct the necessary corrections to it. We further submit that careful consideration of the required corrections will also disclose the total invalidity of the judgment for the reasons stated in our Jurisdictional Statement.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the United States District Court for the Eastern District of Missouri, Eastern Division, be reversed.

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JOHN L. LAUBACH, JR.
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Counsel for Appellants
Edmund D. Osbourne and
Pittsburgh Towing Company

CERTIFICATE OF COUNSEL

I, John L. Laubach, Jr., counsel for the above-named Appellants, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

.....

JOHN L. LAUBACH, JR.
Counsel for Appellants
Edmund D. Osbourne and
Pittsburgh Towing Company